



National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0033]

Agency Information Collection Activities; Notice and Request for Comment; Information

Collection Request: Criminal Penalty Safe Harbor Provision

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for reinstatement of a previously approved information collection.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for reinstatement of a previously approved information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval regarding NHTSA's Criminal Penalty Safe Harbor Provision.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by the Docket No. NHTSA-2022-0033 through any of the following methods:

- Electronic submissions: Go to the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: (202) 493-2251.

- Mail or Hand Delivery: Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366-9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the *Federal Register* published on April 11, 2000 (65 FR 19477-78) or you may visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT:

For additional information or access to background documents, contact Alexandra Cohen, Office of the Chief Counsel, (202) 366-5263, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number (2127-0609).

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the Federal Register providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of

information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: CRIMINAL PENALTY SAFE HARBOR PROVISION

OMB Control Number: 2127-0609

Form Number(s): N/A

Type of Request: Request for reinstatement of a previously approved information collection.

Type of Review Requested: Regular

Requested Expiration Date of Approval: 3 years from date of approval

Summary of the Collection of Information:

Section 5 of the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act (Pub. L. No. 106-414), codified at 49 U.S.C. § 30170, notes that 18 U.S.C. § 1001 provides for criminal liability in circumstances where a person had the intention of misleading the Secretary of Transportation (Secretary) regarding safety-related defects in motor vehicles or motor vehicle equipment that caused death or serious bodily injury. Section 30170 also contains a "safe harbor" that allows a person to avoid criminal penalties if that person lacked

knowledge at the time of the violation that the violation would result in an accident causing death or serious bodily injury and if that person corrects any improper reports or failure to report to the Secretary (NHTSA by delegation) within a reasonable time. As required by Section 5 of the TREAD Act, NHTSA published a final rule to implement the safe harbor provision and establish what constitutes a “reasonable time” and a sufficient manner of “correction,” as they apply to the safe harbor from criminal penalties. 66 FR 38380 (July 24, 2001). The rule is codified at 49 CFR 578.7.

A respondent that seeks safe harbor under § 30170 and 49 CFR 578.7 must sign and submit to NHTSA a dated document identifying (1) each previous improper report, and each failure to report as required under 49 U.S.C. § 30166, including a regulation, requirement, request or order issued thereunder, for which protection is sought, and (2) the specific predicate under which the improper or omitted report should have been provided. Respondents must submit the complete and correct information that was required to be submitted but was improperly submitted or was not previously submitted, including relevant documents that were not previously submitted, or, if the person cannot do so, provide a detailed description of that information and/or the content of those documents and the reason why the individual cannot provide them to NHTSA (e.g., the information or documents are not in the individual's possession or control).

Description of the Need for the Information and Proposed Use of the Information:

Not only is this information collection required by statute, it also helps NHTSA further its mission. Without this information collection, NHTSA would not have a way to accept submissions from persons seeking “safe harbor.” This process serves to encourage persons to correct violations and submit corrections of any improper reports or failures to report, thereby increasing the likelihood of NHTSA receiving information about safety related defects.

NHTSA anticipates using the information collection to evaluate a person’s request for protection from criminal prosecution and to aid in the identification of potential safety defects in

motor vehicles and motor vehicle equipment. However, no information has been collected since NHTSA issued the implementing regulation at 49 CFR 578.7 in an interim final rule on December 26, 2000 (65 FR 81419).

Affected Public: Those affected are motor vehicle and motor vehicle equipment manufacturers, including officers or employees thereof, and other persons who respond to or have a duty to respond to an information collection pursuant to 49 U.S.C. § 30166 or a regulation, requirement, request, or order issued thereunder. The information collection applies to persons who seek “safe harbor” under § 30170. In order to qualify, a respondent must (1) at the time of the violation, not know that the violation would result in an accident causing death or serious bodily injury; and (2) correct any improper reports or failure to report within a reasonable time.

Estimated Number of Respondents: One.

Frequency: As needed basis.

Estimated Total Annual Burden Hours: Two hours annually.

The agency has received no reports from entities since this information collection was first put into place. However, to account for the possibility of receiving submissions in the future, NHTSA estimates that one person per year will submit a report under this collection of information. NHTSA also estimates that a maximum of two hours would be needed to gather and provide the information. Thus, NHTSA estimates that two burden hours a year would be spent on this collection of information.

To calculate the labor cost associated with submitting the collection of information, NHTSA looked at wage estimates for the type of personnel involved with compiling and submitting the documents. NHTSA estimates the total labor costs associated with these burden hours by looking at the average wage for Management Occupations. The Bureau of Labor Statistics (BLS) estimates that the average hourly wage for Management Occupations (BLS Occupation code 11-0000) in the Management of Companies and Enterprises Industry

is \$74.96.¹ The Bureau of Labor Statistics estimates that private industry workers' wages represent 70% of total labor compensation costs.² Therefore, NHTSA estimates the hourly labor costs to be \$106.33 for BLS Occupation code 11-0000. NHTSA likewise estimates the total labor cost associated with the two burden hours to be \$212.66. Table 1 provides a summary of the estimated burden hours and labor costs associated with those submissions.

Table 1: Burden Estimates

Annual Responses	Estimated Burden Per Response	Average Hourly Labor Cost	Labor Cost Per Submission	Total Burden Hours	Total Labor Costs
1	2 hours	\$74.96	\$106.33	2	\$212.66

Estimated Total Annual Burden Cost: \$8.95.

Assuming the respondent uses the U.S. Postal Service, NHTSA estimates that each mailed response is estimated to cost \$8.95 (priority flat rate envelope from USPS). Accordingly, NHTSA estimates the total annual costs for this information collection to be \$8.95 (1 submission × \$8.95). If the respondent emails the report to NHTSA, the cost may be less than \$8.95.

PUBLIC COMMENTS INVITED: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

¹ See May 2020 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 336100 - Motor Vehicle Manufacturing, available at https://www.bls.gov/oes/2020/may/naics4_336100.htm (accessed June 2022).

² See Table 1. Employer Costs for Employee Compensation by ownership (June. 2020), available at <https://www.bls.gov/news.release/ecec.t01.htm> (accessed June 2022).

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Ann E. Carlson,
Chief Counsel.

[FR Doc. 2022-13933 Filed: 6/28/2022 8:45 am; Publication Date: 6/29/2022]